

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JOSIAH LINDSEY, an individual,

Plaintiff,

v.

MICHAEL NOLAN, individually, and JOHN
GJOVIK, individually,

Defendants.

No.

COMPLAINT

DEMAND FOR JURY TRIAL

I. NATURE OF THE CASE

1.1 This is a civil rights action brought under 42 U.S.C. § 1983 for damages arising from Michael Nolan's sexual harassment and abuse of the Plaintiff, along with actions and omissions by Nolan's supervisor, John Gjovik, that enabled his behavior. At the time of the events, the Plaintiff was incarcerated by the State of Washington at Naselle Youth Camp where Nolan worked as a juvenile rehabilitation counselor and supervisor. Nolan used his position to isolate the Plaintiff and groom him for sexual abuse by coercing the Plaintiff to swim naked and making overt sexual comments. Gjovik facilitated this behavior by failing to take appropriate action against Nolan after being on notice that he engaged in inappropriate behavior and presented a risk of harm to incarcerated youth. These violations caused the Plaintiff emotional distress, humiliation, personal indignity, embarrassment, and anxiety. Further, Nolan's conduct interfered with his ability to trust DYCF staff and participate meaningfully in the rehabilitative process.

II. PARTIES

2.1 Plaintiff Josiah Lindsey is a man and a resident of Clark County, Washington. At all times relevant, Mr. Lindsey was incarcerated by the State of Washington at Naselle Youth Camp.

2.2 At all relevant times, Defendant Michael Nolan was an employee of the State of Washington, Department of Children, Youth & Families and was acting under color of state law. Upon information and belief, Mr. Nolan is a resident of Pacific County, Washington.

2.3 At all relevant times, Defendant John Gjovik was an employee of the State of Washington, Department of Children, Youth & Families, was acting as Defendant Michael Nolan's supervisor, and was acting under color of state law. Upon information and belief, Mr. Gjovik is a resident of Pacific County, Washington.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331.

3.2 Venue is appropriate in the Western District of Washington pursuant to 28 U.S.C. § 1391 because the events and omissions giving rise to the claims alleged here occurred within the Western District of Washington.

IV. FACTS

Naselle Youth Camp

4.1 Naselle Youth Camp is a non-fenced medium security facility that is operated by DCYF and provides educational and treatment services for male youth offenders.

4.2 Naselle is located in rural Pacific County. The camp is located near a forest and has a creek that runs through it, with several trails that access the forest.

4.3 One of the primary purposes of Naselle Youth Camp is to respond to the needs of its residents and facilitate in their rehabilitation.

4.4 The State assigns each youth at the camp a counselor whose job it is to assess the youth's needs and provide and facilitate appropriate treatment.

1 4.14 While Josiah resided at Naselle, Nolan used his position as Josiah's counselor and
2 leader of the Native group to gain Josiah's trust and groom him for sexual abuse.

3 4.15 Nolan invited Josiah to join the Native group and asked Josiah to go alone with
4 him on several occasions to set up the sweat lodge. Nolan also used his position as Josiah's
5 counselor to take Josiah out of his residence and walk with him around the outdoor grounds of
6 Naselle, under the guise of counseling sessions.

7 4.16 On several of these occasions between February and August 2018, Nolan took
8 Josiah to a secluded body of water where Nolan swam naked. Nolan coerced Josiah to swim
9 naked with him by using his influence and authority as Josiah's counselor and by telling him
10 swimming with clothes on was disrespectful to Native American culture.

11 4.17 While they were swimming, Nolan made comments to Josiah about the size of his
12 and Josiah's respective genitalia.

13 4.18 After each occasion, Nolan pressured Josiah not to tell anyone they had gone
14 swimming because Nolan could get in trouble. Nolan told Josiah that he had taken him because
15 Josiah was special.

16 4.19 After Josiah quit participating in the Native group and started refusing Nolan's
17 invitations to go swimming, Nolan told Josiah that he needed room on his caseload for another
18 resident. Nolan told Josiah to fill out a form requesting a change of counselors.

19 4.20 Josiah briefly transferred to a different DCYF facility before returning to Naselle
20 in late November 2018.

21 4.21 Upon his return, Nolan visited Josiah in his new residence lodge and asked him to
22 go swimming again. Nolan became angry when Josiah refused.

23 4.22 Josiah suffered and has continued to suffer emotional harm as a result of these
24 events, including emotional distress, humiliation, personal indignity, embarrassment, and
25 anxiety. Further, Nolan's conduct interfered with Josiah's ability to trust DCYF staff and
26 participate meaningfully in the rehabilitative process.

Gjovik's Notice of Nolan's Misconduct

4.23 Throughout the time that Nolan abused the plaintiff, his inappropriate conduct toward young men confined at Naselle placed Nolan's supervisor, John Gjovik, on notice of a foreseeable risk that he was abusing the young men or grooming them for sexual abuse.

4.24 Nolan spent excessive amounts of time in one-on-one counseling with certain young men, including the Plaintiff.

4.25 Nolan did not adequately document his one-on-one counseling sessions.

4.26 Nolan spent excessive amounts of time taking certain young men, including the Plaintiff, out of their residence lodges for long walks on the secluded Naselle grounds. On some occasions, Nolan would not take his radio with him on these walks, making it impossible for other staff to reach him.

4.27 Nolan engaged in excessive physical contact with Naselle residents, including Plaintiff, attempting to pass off this behavior as "horseplay" or part of his counseling relationship with the young men.

4.28 Nolan made inappropriate sexual remarks to other staff members about the young men confined at Naselle, including comments about their genitalia and speculation about their sexual orientation.

4.29 These behaviors by Nolan were warning signs for sexual misconduct or abuse. Gjovik knew or should have known that Nolan was committing sexual misconduct or abuse or grooming young men for abuse, including the Plaintiff, but Gjovik failed to act to prevent these harms.

DCYF Investigates and Fires Nolan

4.30 In October 2019, DCYF began an administrative investigation into Nolan's conduct with youth at Naselle.

4.31 Following that investigation, which included interviews with current and former Naselle staff and residents, including the Plaintiff, DCYF concluded that Nolan had taken

Naselle residents to a secluded body of water, swam naked with them, and encouraged youth to participate naked in the sweat lodge ceremonies, in violation of numerous DCYF policies.

4.32 On May 11, 2020, as a result of the administrative investigation, DCYF terminated Nolan's employment.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Federal Civil Rights Violations Under 42 U.S.C. § 1983)

5.1 Plaintiff incorporates herein the facts described above.

5.2 Defendant Michael Nolan's actions in coercing or attempting to coerce the Plaintiff to swim naked with him violated the Plaintiff's rights to bodily privacy.

5.3 Nolan's actions in grooming the Plaintiff for sexual abuse and sexually harassing and abusing the Plaintiff violated the Plaintiff's rights to bodily integrity.

5.4 Nolan's actions in grooming the Plaintiff for sexual abuse and sexually harassing and abusing the Plaintiff were without penological justification and were done for Nolan's own sexual gratification.

5.5 Nolan's conduct towards the Plaintiff in coercing or attempting to coerce the Plaintiff to swim naked with him, grooming the Plaintiff for sexual abuse, and sexually harassing and abusing the Plaintiff was malicious, oppressive, or in reckless disregard of the Plaintiff's rights.

5.6 By virtue of the facts set forth above, Defendant Michael Nolan is liable to the Plaintiff for compensatory and punitive damages for deprivation of the Plaintiff's civil rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

5.7 Defendant John Gjovik knew or should have known of Nolan's violations of the Plaintiff's rights under the Eighth and Fourteenth Amendments to the Constitution but failed to act to prevent them.

5.8 Gjovik's conduct was in reckless disregard of the Plaintiff's rights.

1 5.9 By virtue of the facts set forth above, Defendant John Gjovik is liable to the
 2 Plaintiff for compensatory and punitive damages for deprivation of the Plaintiff's civil rights
 3 guaranteed by the Eighth and Fourteenth Amendments to the Constitution and 42 U.S.C. §1983.

4 **VI. DEMAND FOR JURY**

5 6.1 Plaintiff demands a trial by jury.

6 **VII. DAMAGES**

7 7.1 Defendants' violations of the law identified above have caused the Plaintiff
 8 damages, including but not limited to emotional distress, personal indignity, embarrassment,
 9 anxiety, anguish, loss of enjoyment of life, and interference with their ability to engage fully in
 10 the rehabilitative process. The Plaintiff reserves the right to seek all damages and remedies
 11 available under the law.

12 **VIII. REQUEST FOR RELIEF**

13 WHEREFORE, Plaintiff requests relief against Defendants as follows:

14 8.1 Compensatory damages;

15 8.2 Punitive damages from the individual defendants on Plaintiff's claims pursuant to
 16 42 U.S.C. § 1983;

17 8.3 Costs, including reasonable attorney's fees, under 42 U.S.C. § 1988 and to the
 18 extent otherwise permitted by law;

19 8.4 The right to conform the pleadings to the evidence presented at trial;

20 8.5 Such other relief as may be just and equitable.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

1 DATED this 29th day of January, 2021.

2
3 MacDONALD HOAGUE & BAYLESS

MacDONALD HOAGUE & BAYLESS

4
5 By s/Tiffany M. Cartwright
Tiffany M. Cartwright, WSBA # 43564
tiffanyc@mhb.com
6 705 2nd Ave, Suite 1500
Seattle, WA 98104
7 206-622-1604

8 *Attorneys for Plaintiff*

By s/Jesse Wing
Jesse Wing, WSBA #27751
jessew@mhb.com
705 2nd Ave, Suite 1500
Seattle, WA 98104
206-622-1604

Attorneys for Plaintiff